Office - Supreme Court, U.S.
FILED
MAY 15 1985
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

NO. 84-1525

JESSE FRANK WAITES,

Petitioner,

-v.-

STATE OF GEORGIA,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Georgia

BRIEF IN OPPOSITION FOR THE RESPONDENT

WILLIAM B. HILL, JR.
Senior Assistant
Attorney General
Counsel of Record
MICHAEL J. BOWERS
Attorney General
JAMES P. GOOGE, JR.
Executive Assistant
Attorney General
MARION O. GORDON
First Assistant
Attorney General
J. MICHAEL DAVIS
Staff Assistant
Attorney General

Please Serve:

WILLIAM B. HILL, JR.
132 State Judicial Bldg.
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-3359

BEST AVAILABLE COPY

20pp

QUESTION PRESENTED

Whether the Georgia Court of Appeals properly concluded that the Petitioner's statement was admissible as it was not the product of custodial interrogation.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
STATEMENT OF THE CASE.....	1
STATEMENT OF FACTS.....	3
REASON FOR NOT GRANTING THE WRIT	
THE TRIAL COURT AND THE GEORGIA COURT OF APPEALS PROPERLY CONCLUDED THAT THE PETITIONER'S STATEMENT COULD BE INTRODUCED INTO EVIDENCE AS THE STATEMENT WAS NOT THE PRODUCT OF CUSTODIAL INTERROGATION.....	6
CONCLUSION.....	14
CERTIFICATE OF SERVICE.....	15

TABLE OF AUTHORITIES

Page(s)

Miranda v. Arizona,
384 U.S. 436 (1963)..... 12

Rhode Island v. Ennis,
446 U.S. 291 (1980)..... 7,10

Waites v. State,
172 Ga. App. 524,
323 S.E.2d 624 (1985).... 2

Waites v. State,
No. 41779 (Ga. decided
Jan 7, 1985)..... 2

No. 84-1525

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

JESSIE FRANK WAITES,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

PART ONE

STATEMENT OF THE CASE

Petitioner, Jessie Frank Waites was convicted on August 11, 1983 in

the State Court of Gwinnett County on the charge of failure to give information and render aid. The Petitioner was sentenced to twelve months probation, a fine of $1,000 and 96 hours of community service. The Georgia Court of Appeals affirmed the Petitioner's conviction on November 7, 1984. Waites v. State, 172 Ga. App. 524, 323 S.E.2d 624 (1985). The Supreme Court of Georgia denied certiorari on January 7, 1985. Waites v. State, No. 41779 (Ga. decided Jan. 7, 1985)..

STATEMENT OF FACTS

On January 27, 1983 at approximately 3:30 a.m. an accident, involving a car registered to the Petitioner, occurred in Gwinnett County, Georgia. The police arrived at the scene but were unable to locate the driver of the car registered to the Petitioner. The police did discover several items belonging to the Petitioner in that car.

Approximately 2 hours later the Petitioner was found walking approximately 2 1/2 to 3 miles from the scene of the accident. The Petitioner appeared to be disoriented and intoxicated. The Petitioner was then placed in custody and taken to a local police station. The Petitioner

was not given the Miranda warnings. A citation for the Petitioner was issued at approximately 5:42 a.m. At approximately 6:00 a.m., while the Petitioner was waiting at the police station, an officer of the Doraville Police Department who was a friend of the Petitioners reported for duty. Upon seeing the Petitioner at the police station the officer asked the Petitioner what he was doing there. The Petitioner then replied, "I screwed up. I hit a car on the expressway and I blowed (sic) a nineteen on the box (intoximeter)."

At the Petitioner's trial the prosecutor attempted to introduce the Appellant's statement to the officer. A Jackson v. Denno hearing was held

and the trial court found that while no Miranda warnings had been given to the Petitioner prior to this statement, the statement was admissible as it was not the product of custodial interrogation. The Georgia Court of Appeals affirmed the trial court's ruling as to the admissibility of the Petitioner's statement.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

A. THE TRIAL COURT AND THE GEORGIA COURT OF APPEALS PROPERLY CONCLUDED THAT THE PETITIONER'S STATEMENT WAS ADMISSIBLE AS IT WAS NOT THE PRODUCT OF CUSTODIAL INTERROGATION.

The Petitioner contends that the trial court and the Georgia Court of Appeals erred in ruling that the Appellant's statement was admissible. The Petitioner contends that the statement should not have been allowed into evidence as he had not been given

the Miranda warnings and was in custody.

The Respondent would respectfully submit that, while the Petitioner was in custody and had not been given the Miranda warnings, the trial court and Court of Appeals were correct in ruling that the statments were admissible as the statements were clearly not the product of any "interrogation".

This Court, in Rhode Island v. Ennis, 446 U.S. 291 (1980) held that:

> "Interrogation," as conceptualized in the Miranda opinion, must reflect a measure of compulsion above and beyond that inherent in custody itself.

We conclude that the Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition

focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the Miranda safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police. A practice that the police should know is reasonably likely to invoke an incriminating response from a suspect thus amounts to interrogation. But, since the police surely cannot be

held accountable for the unforseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of the police officers that they should have known were reasonably likely to elicit an incriminating response.

Rhode Island v. Ennis at 300, 301, 302 (Emphasis supplied).

The Respondent would respectfully submit that, based upon the above holding of this Court, the statements of the Petitioner were not the product of an "interrogation." A friend of the Petitioner, which friend happened to be a police officer, reported for

duty and saw the Petitioner waiting at the police station. The officer admitted that he did not know the Petitioner was in custody or had been charged with any offense. The Officer saw the Petitioner standing in the hallway, noticed that the Petitioner was wet and asked him "What are you doing here, Frank?" The officer stated that the Petitioner was not handcuffed, that no one was guarding the Petitioner, and that he had no reason to believe that the Petitioner was in custody. Therefore, the Respondent would submit that this officer could not have known that his question would have produced any type of incriminating response.

Respondent would therefore respectfully submit that the Petitioner's statement could properly be introduced into evidence. The statement itself was not the product of interrogation but was in effect a voluntary response to a question asked of the Petitioner by a friend, which friend happened to be a police officer. The Respondent would submit that this was clearly not interrogation as defined in Miranda v. Arizona, 384 U.S. 436 (1963) as it was not the product of any conscious effort on the part of the arresting authorities to obtain information from the Petitioner. Therefore, the statement was not taken in violation of Miranda, supra, and thus both the

trial court and the Georgia Court of Appeals properly determined that the statement could be introduced into evidence.

CONCLUSION

The Respondent would respectfully submit that as the Georgia Court of Appeals correctly applied the decisions of this Court, that no federal constitutional issue exists which would justify the granting of a writ of certiorari. The Respondent would therefore request that this Court deny the petition for a writ of certiorari filed on behalf of the Petitioner, Jessie Frank Waites.

CERTIFICATE OF SERVICE

I, WILLIAM B. HILL, JR., a member of the bar of the Supreme court of the United States and counsel of record for Respondent, hereby certify that in accordance with the Rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief in Opposition for the Respondent upon the Petitioner by depositing three copies of same in the United States Mail, with proper address and adequate postage to:

Samuel H. Harrison
Harrison & Harrison
P. O. Box 88
Lawrenceville, GA 30246-0088

Office of the Solicitor
State Court of Gwinnett County
189 Pike Street
Lawrenceville, Georgia 30245

This 13TH day of May, 1985.

/s/

WILLIAM B. HILL, JR.
Senior Assistant
Attorney General
Counsel of Record
for Respondent.